IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONS Nos 2843,
2919, 2924 and 2780 of 1991 and SPECIAL CIVIL
APPLICATIONS NOS.1971, 6909, 5872 and 2074 of 1988
and SPECIAL CIVIL APPLICATIONS NOS.7331 and
7449 of 1990 and SPECIAL CIVIL APPLICATION
NO.2001 of 1989.

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHENDRAKUMAR R PATEL

Versus

SECRETARY TO GOVERNMENT

Appearance:

MR PV HATHI with Mr.Dhirendra Mehta and Mr DP Vora for Petitioners

Ms. Hansa Punani, learned AGP for the respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 09/03/2001

COMMON ORAL JUDGEMENT

1. Through these 11 petitions common grievance has

been raised by ad-hoc appointees as Lecturers in various Colleges against the appointments being given to them for the terms of academic session only denying them the salary for the vacation period, subjecting them to termination at the end of academic session and reappointing them in the next session and termination of their services although no candidates selected by thye G.P.S.C. are available in the respective branch/speciality /subject and they claim continuity of service from the date of their initial appointment. I, therefore, propose to decide all these 11 Special Civil Applications by this common judgment and order as under:

2. Facts relating to Special Civil Application No.2843/91 are as under:-

This is a petition filed by two petitioners, namely, Mahendrakumar R.Patel -Lecturer in Gujarati, Govt. Arts College, at Vansada, District - Valsad and Kumari Manjulaben D. Chauhan - Lecturer in Gujarati, Govt. Arts College, at Vansada, District - Valsad. Both these petitioners, claiming that they had been selected by Local Selection Committee as Lecturers in Gujarati subject for the Government Arts College, Vansada, District Valsad, filed the present Special Civil Application stating that their appointment orders have been issued by the Principal and this appointment was only upto the end of the first academic term of 1990-91 and that their services will be liable to termination when the candidates selected by the Public Service Commission report for duties or when these vacancies are filled in by transfer of lecturers from other Govt. Colleges. It is their case that no candidate selected by Public Service Commission had reported on duty and no Lecturers from any other Government College were transferred and posted against the posts held by them; yet the respondent No.3 i.e. Principal. Govt. Arts College at Vansada, District Valsad terminated the services of the petitioners with effect from 13.10.90 i.e. on completion of the first term of the academic year 1990-91. It is also stated by them that the post of Lecturers held by them were sanctioned by the Government on long term basis. It is their say that they were again appointed afresh for the second term of 1990-91 and they were appointed upto 5.5.91 on temporary basis for the second term of 1990-91 and the posts have been duly sanctioned by the Government on long term basis. Apprehending that their services will be terminated with the end of the second term of the Session on 5.5.91 the present Special Civil Application dated 20.4.91 was filed before this court on 20.4.91. When the matter came up

before the court on 22.4.91 Rule was issued and the interim relief was also granted in the terms that the respondents are restrained from terminating the services of the petitioners only on the ground that the period of their appointment had expired coupled with the condition that as and when any candidate regularly selected by G.P.S.C. or other regular appointee is available and such appointee is required to be placed vice the petitioners, it would be open to terminate petitioners' services on that ground. It was also made clear that if there is any other lawful reason such as abolition of the post, it will be open for the respondents to terminate the services of the petitioners on that ground. Thereafter, petition has remained pending for all these years since 1991 but none of the three respondents have cared to file any reply whatsoever. No application was filed even for the purpose of modification or vacation of the interim order and the learned counsel for the petitioners submits that both these petitioners are still continuing as Lecturers in Gujarati in the Government Arts College at Vansada, District - Valsad without any interruption.

Mr.D.P.Vora, learned counsel for the petitioners, has submitted that the selections were held for the post of Lecturers in Gujarati in the year 2000 and the G.P.S.C. has already sent its recommendation to the Government. However, so far no appointments have been made. He is not in a position to say as to whether the present two petitioners had appeared in these selections before the G.P.S.C. or not.

3. Facts relating to Special Civil Application No.1971/88 are as under:-

This Special Civil Application was filed by two petitioners, namely, Smt.Jyoti K.Shah and Shri Sureshchandra K.Trivedi, Lecturer in Management in the Faculty of Commerce, Gujarat College, Ahmedabad and Lecturer in Commerce, Gujarat College, Ahmedabad respectively, claiming that they had been appointed as Lecturers on ad hoc basis pending the availability of the candidates to be selected by G.P.S.C. It is their say that the post held by them carry the pay scale of Rs.700-1600 with usual allowances, which was due to be revised retrospectively with effect from 1.1.1986 in pursuance of the recommendations of the Malhotra Commission. Both these petitioners claim that they possess educational qualifications as prescribed by Gujarat University to hold the post of lecturers. Petitioner No.1 has claimed that she had worked as

lecturer from 1.8.84 till the end of the first term; 17.7.86 to 25.10.86; January 1987 till the end of second term; 1st January 1988 to 27/30 April 1988. Petitioner No.2 has claimed that he had worked from 8.12.85 to 24.12.85; 2.1.86 to 7.5.86; 17.7.86 to 25.10.86; 18.11.86 to 24.12.86; January 1987 to end of the term; 1st January 1988 to 29/30th April 1988. The petitioners have also stated that the posts held by them are full time posts on regular establishment sanctioned on long term basis and that they are also eligible for appointment on these posts on regular basis. The petitioners claim that although they had been appointed on ad hoc basis, such an appointment has in fact been made after their selection by a Selection Committee and that they had topped the select list. These petitioners filed the present petition dated 19.4.88 on 20.4.88 before this court with the prayer that the petitioners be deemed to have always been in continuous service ever since their initial appointments and they be held eligible for all the incidental benefits of continuity of service including salary for the vacations until they or any one of them happen to be displaced by the candidates selected by G.P.S.C. When this matter came up before the court on 21.4.88 rule was issued and by way of ad interim relief it was directed that the petitioners' services shall not be terminated and further that as and when regularly selected candidates by G.P.S.C. or any other regular appointees are available and such candidates are required to be appointed in place of petitioners, it will be open to the respondents to move this Court for modifying and/or for vacating ad interim relief. The respondents were also directed to file affidavit in reply latest by 31.7.88. This petition has also been pending since 1988 and even after the pendency of more than 12 years, none of the respondents have cared to file any reply whatsoever. This interim relief dated 21.4.88 was modified on 12.10.88 to the effect that in case any regularly selected candidate by G.P.S.C. or any other regular appointees are available and such persons are required to be appointed in place of the petitioners, Department will be at liberty to appoint them even without taking permission of this Court. It is given out that Mr.M.K.Joshipura, through whom the present Petition was filed, had expired during the pendency of the petition and, therefore, notice was sent to the petitioners and the same had been duly served upon the petitioners, but no appearance of any advocate has been filed on behalf of the petitioners in this matter. In this matter the averments made in the petition have remained uncontroverted.

3. Facts relating to Special Civil Application No.2919/91 are as under:-

Petitioner in this case, namely, Ashokkumar Lallubhai Patel, claims to be selected by a Selection Committee for appointment as Lecturer in Sanskrit. He was appointed as such in the Govt. Arts College, Vansada, District - Valsad. The appointment order dated 11.9.90 has been placed on record as Annexure "A". As per this appointment order, the petitioner's appointment was to end with the first academic term of the year 1990-91, but it was further mentioned in the body of the appointment order that services of the petitioner will be terminated when the candidates selected by G.P.S.C.. report for duty or when the vacancy is filled in by transfer. After the petitioner was appointed as Lecturer in terms of the appointment order dated 11.9.90 no candidates selected by G.P.S.C. had reported for duty and no Lecturer from any other Government College was transferred or posted against any of these posts on which the petitioner was working. Yet the services of the petitioner were terminated with effect from 13.10.90 on completion of the first term of the academic year 1990-91 and the post of Lecturer, on which the petitioner was appointed, was sanctioned by the Government on long term basis. The petitioner's say is that respondent No.3 i.e. Principal, Govt. Arts College, at Vansada, District Valsad had no authority to terminate the services of the petitioner. It is also the case of the petitioner that he was again appointed afresh for the second term of 1990-91 by the Principal, Govt. Arts College, at Vansada, District - Valsad as Lecturer in the same subject and new appointment order given to the petitioner appointing him upto 5.5.91 on temporary basis for the second term of 1990-91 has been filed with the Petition as Annexure "B". Apprehending that the petitioner's services were likely to be terminated from 5.5.91, the present petition was filed on 22.4.91 and when the matter came up before the Court on 23.4.91,Rule was issued and interim order was passed to the effect that the respondents were restrained from terminating the petitioner's services on the ground that the period of appointment had expired. It was further ordered that as and when any candidate regularly selected by G.P.S.C. or other regular appointee is available and such appointee is required to be placed vice petitioner, it would be open to terminate petitioner's service on that ground. It was also made clear that if there is any other lawful reason such as abolition of post, it will be open to the respondents to terminate the petitioner's services on that ground.

In this matter affidavit in reply dated 21.9.95 has been filed by one Shri Shantilal B. Dhobi,Deputy Director of Higher Education. It has been pleaded that an ad hoc appointee has no right and that the petitioner is not falling within the sphere and zone of Government servant and/or civil servant. It has also been pleaded in this affidavit in reply dated 21.9.95 that the Government had issued executive instructions vide letter dated 6.1.90 making it clear that the person who is regularly employed should be given increment and leave benefits as per BCSR 50. However, even this reply is conspicuously silent as to whether any selections were held by the G.P.S.C. or not.

4. Facts relating to Special Civil Application No.2924/91 are as under:-

The petitioner, namely, Hitendrakumar Y. Kharvasia, in this case has stated that he had been selected on 13.1.90 by a Selection Committee as a part time Lecturer in History and appointed in the Government Arts College, Vansada, District - Valsad as such on 15.1.90. As per the appointment order, the appointment was only upto the end of the second academic term of 1989-90 and he was appointed on fixed salary of Rs.900/-per month. It was also mentioned that his services will be terminated when the candidates selected by P.S.C.. reports for duty or when vacancy is filled in by transfer of Lecturer from other Government College. It is the say of the petitioner that no candidate selected by P.S.C. had reported for duty. No Lecturer from other Government College was transferred or posted against the post held by him and yet the respondent No.3 i.e. Principal, Govt. Arts College, Vansada, District Valsad terminated the services of the petitioner with effect from 30.4.90 on completion of the second term of academic year 1989-90. The termination order had been annexed with the petition as Annexure "B". The petitioner was again appointed from 26.6.90 as full time Lecturer in History against the part time vacancy, which was subsequently made full time from 26.6.90. A copy of the appointment order dated 26.6.90 has been enclosed as Annexure "C". As per the order Annexure "C" the appointment was made against the part time vacancy which was created upto 25.6.90 but the appointment was given only upto 30.4.90 so that pay is not required to be paid during vacation. He was again appointed from 26.6.90 as per order Annexure "C". It is also the case of the petitioner that after his reappointment no candidate selected by P.S.C. reported on duty and no Lecturer from

any Government College was transferred against the post held by the petitioner and yet the services of the petitioner were terminated with effect from 13.10.90, on completion of the first term of academic year 1990-91. The petitioner was again appointed for the third time as Lecturer in History for second term of academic year 1990-91 in terms of the order Annexure "E" dt.5.11.1990, when the post of Lecturer was sanctioned by Government on long term basis. The petitioner, therefore, filed the present petition asking for the relief to continue him in service till the candidate selected by P.S.C. becomes available. The Petition dated 22.4.91 was filed on 22.4.91. When this petition came up before the Court on 23.4.91, Rule was issued and interim relief was granted to the effect that respondents are restrained from terminating the petitioner's services only on the ground that the period of his appointment had expired. However, as and when any candidate regularly selected by G.P.S.C. or the regular appointee is available and such appointee is required to be placed vice petitioner, it will be open to terminate the petitioner's services on that ground and it was also made clear that if there is any lawful reason such as abolition of post, it would be open for the respondents to terminate the petitioner's services on that ground. In this petition also, which is pending since 1991, no reply has been filed. However, learned counsel Mr. D.P.Vora appearing on behalf of petitioner has orally submitted that selections were held by G.P.S.C. in the year 2000 and recommendations have been sent to the Government, but so far no appointments have been made and the petitioner has been continuing as Lecturer ever since his appointment as stated above and is continuing till this date.

5. Facts relating to Special Civil Application No.6909/88 are as under:-

The petitioner Miss Hina Manoranjan Kikani has come with the case that she holds a 2nd Class Degree in M.A. in Sanskrit of the Saurashtra University. She had secured 57% marks on the aggregate in the M.A.Examination held in April 1983. She had also cleared B.A.Examination with Sanskrit as a special subject having obtained 70% of total marks in June 1981 and that she possesses the qualification prescribed by the University for the affiliated College teachers. Her date of birth is 26.2.61 and at the time of filing the petition she was over 27 years of age. That the Government had been making appointments on the post of Lecturer in several faculties in Gujarat State Educational Service Class (II) in the pay scale of Rs.700-1600 subject to revision

retrospectively from 1.1.86 in pursuance of Malhotra Commission,pending availability of candidates selected by G.P.S.C. The petitioner says that she is one of the candidates so appointed as Lecturer. She was appointed as Lecturer in Sanskrit in the Govt.Arts & Commerce College, Ahwa, Dangs for the second term of academic year 1987-88 by order dated 1.1.88, Annexure "A" with the petition. As per this order, the post was sanctioned upto the end of second term, but it was a long term post and the petitioner had in fact been reappointed to that very post during the first term of the academic year 1988-89 commencing from July 1988, although she has been deprived of the benefit of Vacation from May 1988 to June 1988. While she was so working in the Govt. Commerce College, Ahwa she got another order from the Principal, R.R. Lalan College, Bhuj appointing her as Lecturer in Sanskrit in the R.R. Lalan College, Bhuj for the period ending first term of the academic year 1988-89 by order dated 13.8.88 - Annexure "C" with the petition. On 18.8.88 she joined at R.R. Lalan College, Bhuj on being relieved on 17.8.88 and has been continuing as such.The present Special Civil Application was filed by the petitioner on 13.10.88 with the prayer that the petitioner be deemed to be continuing in service ever since her initial appointment as Lecturer in the Government Commerce College, Ahwa, Dangs effective from 6.1.88 and that she be held eligible for all the incidental benefits of continuity of service, including the vacations, until she happens to be displaced by a candidate selected by G.P.S.C. When this Petition came up before the Court on 21.10.88 rule was issued and ad interim relief was granted that the petitioner's services shall not be terminated and it was clarified that as and when regularly selected candidate by G.P.S.C. or any other regular appointee is available and such Candidate is required to be appointed in place of the petitioner, it will be open for the respondents to terminate the services of the petitioner even without seeking any clarification from the Court. While this ad interim order has remained in force through-out and the petition is pending since 1988, no reply to the petition has been filed by any of the respondents.

6. Facts relating to Special Civil Application No.5872/88 are as under:-

The petitioners Shri Asit Bhupatrai Bhatt, Shri Girishkumar Chhaganlal Bhimani, Shri Rajesh Mansukhlal Bhavsar, Shri Bharat Gokaldas Maniyar, Miss Nita P. Patak and Miss Manju B. Agrawal have filed this petition alleging that in the Government Arts, Science, Commerce

and Law Colleges there are posts of Lecturers in the Gujarat Educational Service (Collegiate Branch) Class-II in the pay scale of Rs.700-1600, which is subject to revision retrospectively from 1.1.86 in pursuance of the recommendations of the Malhotra Commission. In the Statement Annexure "B" the details about the petitioners appointment and termination have been given to show that these petitioners were appointed and terminated between 1986 to 1988 and the present petition was filed by them on 30.8.88 with a prayer that petitioners be deemed to have been appointed on regular basis ever since their initial appointment and they may be held eligible for all incidental benefits, including salary for the vacation. When this petition came up before the Court on 11.10.88 the Court passed a detailed order running in several paragraphs while issuing Rule and granting interim relief and the same is reproduced as under:-

"ORAL ORDER:

Rule.

2. Heard the parties with regard to interim relief. By way of interim relief it is directed that the petitioners' services shall not be terminated. If and when regularly selected candidates by G.P.S.C. or any other regular appointees are available and such candidates are required to be appointed in place of petitioners, it will be open to the respondents to terminate the services of the petitioners. Even otherwise, after filing affidavit-in-reply or at any time after the service of notice of this order it would be open to the respondents to request the Court for modifying and/or for vacating the interim relief. Respondents are directed to file affidavit-in-reply latest before November 30, 1988. Moreover, if there is any other lawful reason for termination of service of the petitioners except on the ground that the period of their ad hoc appointment has expired, the respondent authority will be at liberty to take appropriate steps in accordance with law.

3. Today there are three other similar matters on Board. The learned counsel for the respondents states that there are other three or four matters filed by different advocates in the same or similar subject matter. Therein also similar interim orders have been passed. Thus there are about seven to eight such matters and

in each matter more than one petitioner appear to have filed the petition.

3. The picture that emerges from the record of the petition and from the aforesaid facts is not very happy. In almost all colleges ad hoc appointments are made for fixed time. The aforesaid practice has been depreciated by the Supreme Court in the case of Ratanlal and others vs. State of Haryana and others,AIR 1987 SC 478. In that case the Supreme court gave directions to the State Government which are contained in para 2 of the judgment, and the same read as follows:

> "We, therefore, direct the State Government to take immediate steps to fill up in accordance with the relevant rules the vacancies in which teachers appointed on ad hoc basis are now working and to allow all those teachers who are now holding these posts on ad hoc basis to remain in those posts till the vacancies are duly filled up. The teachers who are not working on such ad hoc basis if they have the prescribed qualification may also apply for being appointed regularly in those posts. The State Government may also consider sympathetically the question of relaxing the qualification of maximum age prescribed for appointment to those posts in the case of those who have been victims of this system of 'ad hoc' appointments."

As far as the State of Gujarat is concerned, it appears that the first matter of this nature came up before this Court on February 22,1988. Therein this Court (Coram: D.H.Shukla,J), after admitting the matter, granted interim relief, but made it clear that the petitioners may be displaced by the nominees of G.P.S.C. or by the regular appointees transferred from other places. In subsequent petitions, i.e. special civil application No.1862 of 1988 and 1971 of 1988 which came up before me on April 15, 1988 similar directions were given by way of interim relief. In the aforesaid two petitions which were admitted by me in the month of April, 1988 it was also directed that the Government should file affidavit-in-reply latest before July 31, 1988.

It is candidly stated by the learned counsel for the respondents that so far the affidavit-in-replies have not been filed in the aforesaid matters.

4. It appears that the question which affects the entire academic world is not considered seriously by the Government. The practice of making ad-hoc appointments at the college level adversely affects both the teachers as well as the students, which consequently results in lower standards of education. It is not necessary to articulate the evils which are being fostered on account of such practice. Suffice it to say that such practice is required to be stopped immediately and should not be resorted to except in rare cases when the administrative exigencies may require.

5. The learned counsel for the respondents states that the Government has already submitted requisition before the G.P.S.C. in February, 1988 and the G.P.S.C. has not taken steps thereafter.Be that as it may. Even if the matter is pending with the G.P.S.C. it is the duty of the Government to see that this state of affairs is not continued further in the academic world, and the matter is pursued vigorously with the G.P.S.C. so that regular appointments are made immediately.

6. In above view of the matter it is further directed as follows:-

The Government will take suitable steps immediately to fill up the vacancies, in which teachers are appointed on ad hoc basis and are now working under the protection of the orders of the court, in accordance with the relevant rules. The process shall be completed as far as possible before December 31, 1988. In case there is any difficulty in completing the process before the stipulated date the respondents shall apply to this Court and seek extension of time stating the reasons for extension and giving details about the steps taken. However, it is hoped that this observation shall not be treated as permission to be lukewarm in completing

the process.

7. The office is directed to send a copy of this order to the Secretary, Education Department and the Director of Higher Education. The learned counsel appearing for the respondents is also requested to send a copy of this order to all the concerned authorities.

October 11, 1988 Sd/-
A.P. Ravani, J."

While the petition has remained pending for all these years for a period of 12 years, no reply has been filed and the petitioners have been continuing in service throughout and it is not known as to whether any appointment on the basis of the selection by G.P.S.C. has been made or not.

7. Facts relating to Special Civil Application No.7331/90 are as under:-

The petitioner, namely, R.M.Chauhan, Lecturer in Hindi, has come with the case that in November 1989 he was selected as a part time Lecturer in Hindi by the Staff Selection Committee headed by Director of Higher Education. He was then appointed as part time Lecturer in Hindi in M.P.Shah Arts and Science College, Surendranagar where he served from 18.11.87 to 8.9.89. The petitioner was selected on 30.8.89 for appointment as full time Lecturer in Hindi by the Staff Selection Committee headed by Director of Higher Education. He was then given appointment in the Government Arts & Commerce College, Ahwa, Dangs in the leave vacancy of Shrimati Nainaben Gandhi. The petitioner joined on this post and served from 9.9.89 to 28.10.89 and his appointment, as such, was subsequently approved by the South Gujarat University, Surat under its Resolution No.53 dated 17.10.89. A copy of the appointment order and the approval by the South Gujarat University has been annexed with the petition as Annexures "A" and "B" respectively. After the leave period from 8.9.89 to 28.10.89 the petitioner was appointed on temporary basis against a regular post of Lecturer in Hindi in the pay scale of Rs.2200-4000 by the Principal, Govt. Arts & Commerce College, Ahwa, Dangs under Office Order dated 27.11.89.In terms of this appointment order, the petitioner's appointment was upto the end of second term of 1989-90 or till the Government makes appointment on regular basis, whichever is earlier. The post of Lecturer in Hindi was sanctioned by Government on long term basis. Respondent

No.3 i.e. Principal, Govt.Arts & Commerce College, Ahwa, Dangs then terminated the services of the petitioner on completion of the second term of the Session 1989-90 i.e. from 30.4.90. The petitioner was again appointed for the period upto 13.10.1990. The petitioner then filed the present petition on 4.10.90 and when the matter came up before the court on 5.10.90 while issuing rule, ad interim relief was granted to the effect that the respondents are restrained from terminating petitioner's services only on the ground that period of appointment had expired and that as and when any candidate regularly selected by G.P.S.C. or other regular appointee is available and such appointee is required to be placed vice petitioner, it would be open to terminate the petitioner's services on that ground. It was also made clear that if there is any other lawful ground such as abolition of post, it would be open to the respondents to terminate petitioner's services on that ground. However, no reply to this Petition has also been filed by any of the respondents though the petition is pending since 1990. However, learned counsel for the petitioner has given out that the petitioner is continuing in service till this date.

8. Facts relating to Special Civil Application No.7449/90 are as under:-

The petitioner, namely, Rameshbhai B.Patel has come with the case that he was appointed as Lecturer in Sociology on part time basis on 28.11.88 in the Govt. Arts and Commerce College, Dangs under Office order dated 28.10.88 - Annexure "A" with the petition. The said appointment was only upto second term of academic year 1988-89.The petitioner was thereafter appointed as full time Lecturer in Sociology by the Principal, Govt. Arts and Commerce College, Ahwa, Dangs under order dated 16.1.89 for the period upto the end of the second term of academic year 1988-89 or till the candidate selected by G.P.S.C. is appointed or the post is filled in on transfer by Government. The petitioner was again appointed as Lecturer in Sociology by the Principal, Govt. Arts & Commerce College, Dangs upto the end of the first term of 1989-90 under office order dated 19.6.89 vide Annexure "C". The said appointment of the petitioner was terminated on 28.10.89 after the end of the first term of 1989-90 vide Annexure "D". Thereafter, the petitioner was appointed afresh as a Lecturer in Sociology for the second term of academic year 1989-90 by the Principal, Govt. Arts and Commerce College, Dangs under his office order dated 27.11.89. It was mentioned in the body of the appointment order that the appointment

will stand terminated if the post is filled in by Government by making a regular appointment or till the end of the term, whichever is earlier. This appointment made vide Annexure "E" was terminated on 30.4.90 vide Annexure "F". The Principal of the Govt. Arts & Commerce College, Dangs again issued an appointment order upto first term of 1990-91 on 26.6.90. Since this appointment was only for the first term 1990-91, the petitioner facing prospects of termination in October 1990 filed the present petition before this Court on 9.10.90 and when the matter came up before the court on 10.10.90 while issuing rule, ad interim relief was granted restraining the respondents from terminating the petitioner's service only on the ground that the period of his appointment has expired and further that as and when any candidate regularly appointed is available and is required to be placed vice the petitioner, it will be open to terminate petitioner's services on that ground. It was also made clear that if there is any other lawful reason such as abolition of post, it would be open to the respondents to terminate the petitioner's services on that ground. No reply has been filed.

9. Facts relating to Special Civil Application No.2001/89 are as under:-

The petitioner, namely, Miss Nita Girjashanker Raval, has come with the case that the petitioner holds a First Class Degree in M.A. in History from Saurashtra University. She had been appointed as a Lecturer in the Government R.R. Lalan College, Bhuj for the first term of the academic year 1988-89 under office order dated 17.10.88. She was then relieved with effect from 5.11.88 as per the College Office order dated 5.11.88. The petitioner was re-appointed to the same post with effect from 28.11.88. This appointment was also for the actual teaching session, which was likely to be over by 6.4.89. The petitioner claims that her appointment was factually on a long term post and pending availability of a candidate selected by G.P.S.C. But facing the prospect of termination, the petitioner filed the present petition on 20.3.89 with the prayer that the petitioner be deemed to have always been in continuous service ever since her initial appointment as a Lecturer in History in the Govt. R.R. Lalan College effective from 23.9.88 and she be held eligible for all incidental benefits of continuity of service,including the vacations, until she happens to be displaced by a candidate selected by G.P.S.C. When this petition came up before the Court on 21.3.89 while issuing Rule, interim relief was granted to permit the petitioner to continue in service till further orders.

An affidavit in reply dated 13.4.89 was filed on behalf of respondent No.2. Thereafter on 5.8.93 interim relief was modified in terms of para 12(D), meaning thereby that the petitioner was allowed to remain in continuous service pending hearing and final disposal of the petition and in case the respondents believe that the petitioner is liable to be displaced by the nominee of the GPSC or by the regular appointee transferred from other place, the respondents may move for modifying or vacating the interim relief. It was submitted that the petitioner has been continuing in service throughout till this date.

10. Facts relating to Special Civil Application No.2074 of 1988 are as under:-

The petitioners, namely, Smt. Chetna D.Bhavsar, Smt. Rekha B. Mishra, Shri Shailesh B. Bhavsar and Smt. Jyotsnaben Ishwarbhai Patel have filed the present petition against the termination of their services under the orders dated 26.4.88 and 21.4.88. The details about the petitioners' appointments and spells of service have been given in Para 4 of the petition and it appears from the pleadings that the petitioners' appointment was till the availability of the candidates selected by the Gujarat Public Service Commission. The present petition was filed on 27.4.88 by the petitioners with the prayer that the orders dated 26.4.88 and 21.4.88 be rendered to be inoperative and the petitioners be deemed to have always been in continuous service ever since their initial appointment. In this petition notice was issued on 27.4.88 for the returnable date of 29.4.88. On 29.4.88 ad interim relief was granted in terms of Para 10(5) i.e. operation of the impugned orders dated 26.4.88 and 21.4.88 was suspended with the direction that the services of the petitioners shall not be terminated and they will be continued in service subject to the same terms and conditions as per interim orders passed on 15.4.88 in Special Civil Application No.1862/88. Rule was then issued on 6.5.88 and the ad interim order was continued.Thereafter, on 29.6.88 after hearing both the sides, the court passed an order that the petitioners services shall not be terminated till final hearing of the petition and as and when regularly selected candidates by G.P.S.C. or any other regular appointees are available and such candidates are required to be appointed in place of the petitioners, it will be open to the respondents to move the court for modifying or for vacating interim relief. Till this date no reply has been filed on behalf of the respondents and it is given out that the petitioners have been continuing in service

throughout.

11. Facts relating to Special Civil Application No.2780/91 are as under:-

The petitioner, namely, Jani Daxaben Rameshbhai has come with the case that she possesses M.A.Degree in Gujarati with Ist Class and that she had been selected by duly constituted Selection Committee and was appointed as Lecturer in Gujarati vide appointment order dated 1.12.90. Her appointment was for a period till the last date of second term i.e. 27.4.91. The petitioner's case is that under the Government Circular dated 25.11.88, her services are to be continued till G.P.S.C. selected candidates are available. The present petition was filed on 18.4.91 with the prayer that the petitioner be deemed to have been appointed continuously from her initial date of appointment and accordingly all eligible incidental and consequential benefits of continuity in service, salary for the vacation etc. should be granted. This petition when came up before the court on 19.4.91 Rule was issued and ad interim relief was granted directing respondents to continue the petitioner in service and permit her to discharge her duties until further orders. While the petition was pending since 1991, the affidavit in reply dated 21.9.95 was filed in this court on 23.2.2001. However, it is given out that the petitioner has continued in service through-out.

12. It has been brought to the notice of this court by the learned counsel for both the sides that on this type of grievance number of petitions had been filed, some of which have been decided and some have remained pending and certain maters, i.e. Spl.C.A.Nos.841, 935, 969, 1006, 1246, 1247, 1293, 1477, 1478, 1479, 1981, 2688 of 1998 with Spl.C.A.Nos.2273, 3054, 3165, 3310 of 1990 with Spl.C.A.No.2817 of 1991 and Spl.C.A.Nos.1168, 1169 of 1995 decided on 12.5.99 by a common judgment and order and it has been orally stated by Mr. P.V.Hathi that after this Judgment about 467 posts of Lecturers in different Subjects were advertised through G.P.S.C. and even on that basis no appointments have been made so far. Learned A.G.P. submits that she does not know anything as to what has happened in this regard and she has virtually pleaded no instructions.

13. Be that as it may, one thing is very clear that the common grievance, which has been raised in all these petitions, is that while the petitioners have been given ad hoc appointments till availability of the candidates selected by the G.P.S.C. or regular appointees

otherwise, no selections by G.P.S.C. were held and no regularly selected candidates were appointed in place of the petitioners. The petitioners have continued throughout on the basis of the initial appointment orders and on the strength of the interim orders passed by this Court. It is given out by Mr.P.V.Hathi, learned counsel for the petitioners, that some of the petitioners have been granted increments during this period, some of them been accorded promotion, and yet another petitioner i.e. Miss Hina M.Kikani petitioner in Special Civil Application No.6909/88 has become head of the Sanskrit Department and according to length of service she is the senior most teacher in Sanskrit in whole of the State of Gujarat and she has been serving in the Government Arts College at Junagadh etc. When the petitioners have continued for a period of more than 10 to 12 years by now and yet the Government has not made any appointment by the G.P.S.C., it will be unreasonable to hold that the petitioners could be terminated even in absence of regularly selected candidates. In fact, it is the practice of ad hocism, which has been going on for all these years without making any regular selection through G.P.S.C. for such posts and it has precipitated the situation whereby ad hoc appointees have been continued for such long period of nearly a decade or more than that. The respondents have taken these matters very casually and no serious effort has been made to place on record necessary facts before the Court and the circumstances in which the selections could not be held. The situation has reached a stage wherein many of the petitioners must have become over age by now as was given out by Mr.P.V.Hathi. It was pointed out by the learned counsel for the petitioners that one of the petitioners, namely, Maniar, had attained the age of 42 years, he had become over age. It may be mentioned that when Special Civil Application No.2843/91 with Special Civil Application No.2273/90 with Special Civil Application No.2924/91 with Special Civil Application No.2919/91 had come up before this Court on 23.2.2001 these matters were directed to be listed alongwith other identical matters on 9.3.2001 and it was recorded that the learned A.G.P would come with the present status of the petitioners in all these petitions, yet no details and information has been made available, no assistance whatsoever has been rendered to the Court in any of these matters and the exact position as to whether in any of the subjects or specialities selections have been held and in case any selection has been held what has been the fate of it, whether any appointments have been made or not, nothing has been made known. No Officer is present on behalf of Department nor any record whatsoever has been made

available.

14. One thing is certain that even if any process of selection has started after the decision dated 12.5.99, same has not culminated into any appointment uptill now. The ad hoc appointees, as and when re-appointed, such appointees cannot continue beyond the terms of the order and such appointees on ad hoc basis do not have any enforceable right. But in the fact situation of the present cases, the petitioners in different subjects were given urgent temporary appointments initially and, thereafter, they were sought to be terminated or they faced the prospects of termination while regularly selected candidates were not available and for that reason the ad interim orders, as referred to hereinabove, were passed by the court and the fact cannot be lost sight of that all these petitioners have continued for such a long period of about a decade or more than that. No serious effort was made at any stage for holding the regular selections or to get the matters finally decided or to move applications for vacation or modification of the interim orders and the result is that many of the petitioners must have become over age by now. In such a situation, even if it is ordered that the services of the petitioners shall not be terminated until candidates selected by G.P.S.C. are available, the question arises as to what is going to be the fate of all these persons, who have continued in the service for 10 to 12 years by now and in the process they have also become over age so as to be considered in the selection by G.P.S.C. for the respective posts on which they were appointed. Ageing is a process which does not stop and if the Government does not make any recruitment and regular selections are not held, ad hoc appointees, who are in service, cannot be denied the benefit of facing a regular selection on the ground that they have become over age, because no selections have been held after their initial appointment.

15. In the facts and circumstances of the present cases, it is directed that:-

(i) None of the petitioners shall be terminated until a regularly selected candidate is available for appointments in the concerned Branch/Speciality/ Subject.

(ii) If regularly selected candidates are available, they will not be made to wait and such regularly selected candidates shall be given appointment and the ad hoc appointees shall have to make room for them. Ofcourse in doing so, the Government

would follow the order of seniority according to the length of the service of the ad hoc appointees in the respective Branch/Speciality/ Subject. In other words, amongst the ad hoc appointees in a given subject or speciality or branch, the candidate who was appointed at the earliest point of time will be the last candidate to be replaced.

(iii) Any of the petitioner, if he/she was within age limit at the time of his/her initial appointment, shall not be debarred from competing in the regular selections on the ground of age if no selections by G.P.S.C. were held after the initial appointment.

(iv) It will also be open for the Government to evolve a Scheme to consider the cases of the ad hoc appointees, who have continued for all these years in service, so that they are not deprived of their competing claims for the regular selection and their claims with regard to increments and continuity in service and other consequential benefits etc. shall be decided in accordance with rules..

All these 11 Special Civil Applications are, therefore, partly allowed with the directions as aforesaid. Rule is made absolute in all these Special Civil Applications accordingly. No order as to costs.

(M.R.Calla,J)